

Report to: **Strategic Planning Committee**



Date of Meeting: Tuesday 7 March 2023

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Proposed response to the Teignbridge Local Plan Regulation 19 Consultation

Report summary:

This report advises that Teignbridge District Council are consulting on their local plan and in this report we provide some commentary about the plan, especially in respect of matters that may have cross-boundary implications. Officer recommendation is that East Devon District Council should representations to the Teignbridge Plan. There is concern based on the currently published information that as drafted the plan could lead to some possible pressure to accommodate some unmet housing need in/from Teignbridge, at a future date, in other planning authority areas and this could include East Devon. These concerns are further compounded by uncertainty associated with Torbay local plan work and possible pressures for accommodating Torbay housing outside of Torbay boundaries.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

1. Strategic Planning Committee endorse the proposed representations to the Teignbridge Local Plan consultation that are set out in this report and agree for them to be submitted to Teignbridge District Council.
2. Strategic Planning Committee agree that officers continue to work with officers at Teignbridge District Council to secure further evidence and potential modifications to the Teignbridge Local Plan in the hope that the concerns raised can be withdrawn at a future date.

Reason for recommendation:

To ensure members are aware of concerns highlighted by officers and to secure members endorsement of the proposed objections and detailed technical response by this council to Teignbridge District Council.

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications

- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

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Climate change Low Impact

Risk: Low Risk; .

Links to background information

The text of the Teignbridge Local Plan can be seen at: [proposed-submission-regulation-19-local-plan-2020-2040.pdf \(teignbridge.gov.uk\)](https://www.teignbridge.gov.uk/proposed-submission-regulation-19-local-plan-2020-2040.pdf)

Links to the above, an interactive policies map and other documents can be seen at: [Live consultation: Teignbridge Local Plan - Teignbridge District Council](#)

Link to Council Plan

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

1. Background

- 1.1 Teignbridge District Council are producing a new local plan and it has reached the Regulation 19 stage of plan making, plan Publication, under - [The Town and Country Planning \(Local Planning\) \(England\) Regulations 2012 \(legislation.gov.uk\)](#).
- 1.2 This is a very important point in production of a local plan as it sets out what a planning Authority regard as the appropriate final plan for their area and it needs to be a plan that meets legal and procedural requirements for plan making. Teignbridge are advising that they are 'consulting' on the plan and it is quite standard for the word consulting to be used at this stage of plan making. But consulting should not be read to mean they are actively seeking views and opinions on how they can make the plan better. Rather 'consulting' at this stage could be more accurately read to mean that they are providing the opportunity for people to challenge the plan noting that challenges made will be go to a Government appointed Planning Inspector who will undertake an Examination of the plan. Though it should be noted that a planning authority does have scope to make minor changes to a plan at/after Regulation 19 and a Planning Inspector will almost inevitably recommend more significant changes (Main Modifications) whilst at Examination to allow for a plan to be adopted.
- 1.3 Bearing in mind the above the Teignbridge local plan usefully advises at Paragraph A.21 that:

“.....The Regulation 19 consultation no longer seeks views on alternative options, but instead presents the opportunity to comment on the content of the Local Plan, within a specific remit. The focus/sole purpose for this consultation relates to receiving representations on:

- Legal Compliance – does the plan meet the legal requirements made under various statutes?*
- Soundness – has the plan been positively prepared, justified, effective, and consistent with national policy?*
- Meets the Duty to Cooperate – has the Council engaged and worked effectively with neighbouring authorities and statutory bodies”*

- 1.4 It should be noted that the Teignbridge local plan is running some months ahead of our equivalent local plan for East Devon. The East Devon Local Development Scheme [lds-april-2022.pdf \(eastdevon.gov.uk\)](#) advises that we will reach the Publication stage (Regulation 19) of plan making in autumn 2023.
- 1.5 Consultation on the Teignbridge Local Plan closes at noon on the 13 March 2023.
- 1.6 The Teignbridge local plan seeks to cover all policy matters that might regularly come up as planning considerations in the determination of planning applications that fall to the Council as the planning authority. It is relevant to note that part of Dartmoor National Park falls in Teignbridge District and the park authority is a Planning Authority in its own right. The park authority produces its own local plan and determines planning applications within the National Park. The Dartmoor Local Plan 2018 to 2036 was adopted on 3 December 2021. The Teignbridge local plan does not therefore cover any of the National Park areas of Teignbridge District.
- 1.7 In addressing all regularly occurring planning matters, that fall to the Council, the Teignbridge local plan takes a similar approach to our own emerging East Devon Local Plan, albeit in our case we are looking to exclude (fully or partially) provision of policy for Cranbrook on account of there being the adopted Cranbrook Plan.
- 1.8 The Teignbridge Local Plan is quite conventional in terms of chapter structure and format of policy, much as our emerging local plan also is. The Teignbridge plan has a series of topic based chapters/sections and also has Strategic and non-Strategic policies within these. The plan allocates land for development to show, amongst other matters, where much of the future building in the district is planned to be located.
- 1.9 Whilst Teignbridge is a neighbouring authority to East Devon we actually only share a short boundary with them, essentially a watery boundary that falls midway in the Exe estuary and a very short land boundary to the north west of the city of Exeter. Our East Devon boundaries with Exeter, Mid Devon, Somerset and Dorset are much longer. There are no development sites allocated in the Teignbridge Plan at or close to our estuary boundary.
- 1.10 Along our shared boundary to the north-west of Exeter there is, however, land allocated under their Policy CC6 for wind turbine development. Development of wind turbines in this part of Teignbridge could potentially be visible from parts of East Devon, albeit rural and sparsely populated areas. Policy CC6 includes various policy

tests and it is not suggested that this council object, or indeed raise any comment, in respect of this allocation. We, like Teignbridge, have declared a climate emergency and as such we should be supportive, in principle, of renewable energy generation. Should a planning application be submitted on allocated land we could of course choose to raise comment at that time and if so would seek to do so within the context of compatibility with policy of their local plan as well as national policy and guidance and any other relevant material planning considerations.

- 1.11 As land and water based matters of particular cross boundary importance, and also to include Exeter, are the European designated wildlife sites of the East Devon Pebblebed Heaths, the Exe Estuary and Dawlish Warren. These sites fall in the highest level of biodiversity designation importance afforded in the United Kingdom and development that could adversely impact on the features/species cited in the designation should not be allowed in the absence of mitigation measures to off-set impacts that would otherwise arise. The Teignbridge Plan references the importance of mitigation and highlights the now long established partnership that we and Exeter City Council jointly have with them to collectively deliver mitigation schemes. The mitigation strategy is currently being reviewed and updated by consultants and so to address this issue Teignbridge appear to have assumed that similar mitigation to that required under the current strategy will be required moving forwards. Until the new mitigation strategy is finalised it is unclear whether this assumption is correct.
- 1.12 The most important cross-boundary relationship we have with Teignbridge relates to the location, function and role that Exeter plays in influencing our two Districts and indeed we have on influencing the City. The Teignbridge plan allocates a number of development sites that abut or are close to the City boundary. These are not visible from East Devon, perhaps other than in longer distance views which may in any case be seen against a foreground of urban city development. It is not proposed that we pass comment on these allocations. However, we do need to be aware that their development proposals and allocations of land, and growth and development more generally in Teignbridge, could have outcomes that have impacts of relevance to East Devon. Perhaps most importantly could be impacts on transport and travel networks, particularly roads.
- 1.13 We are working jointly with Teignbridge District Council, Exeter City Council, National Highways (formerly called Highways England) and Devon County Council on transport modelling work to seek to understand the impacts of collective growth proposals on highway and transport systems and to identify suitable interventions to address any concerns identified. Devon County Council are leading on this work and we can expect them, and National Highways, to take a very keen interest in outputs from the work and impacts that may arise. The work could have impacts on the Teignbridge plan as well as ours and the local plan for Exeter city.
- 1.14 By intent we have only sought to provide a general, simple and short overview of the Teignbridge plan. The plan covers many more issues and matters than touched on above and Committee members are encouraged to read the full plan should they wish to see more detail.

1.15 Although there are some concerns about Teignbridge Council making assumptions about the outcome of evidence documents that have not been completed yet; in the absence of evidence to suggest that they are wrong it is not considered appropriate to object to the plan on these grounds and instead to trust that any issues arising from these evidence documents will be addressed as the plan moves forward. There are however technical concerns regarding how housing need and supply are being addressed which are set out below.

2. Proposed response by East Devon District Council to the Teignbridge plan consultation

2.1 Officers of East Devon District Council have reviewed the Teignbridge Local Plan, and specifically noting the purpose of the consultation (as set out in the preceding section of this report) would wish to highlight concerns in respect of plan content.

2.2 It is proposed that this Council respond to the Teignbridge consultation with the following:

East Devon District Council welcomes the publication of the Teignbridge Local Plan and welcomes the opportunities for future joint collaborative working.

However, mindful of national planning policy and guidance, East Devon District Council raises concerns with regard to Policy H1 Land for New Homes as follows:

- 1. The Council is concerned that based on the available information Policy H1 is not consistent with national planning policy and is not justified because:***
 - a) The Local Plan does not set out a minimum housing requirement for the whole plan period and the annual requirement is not based on the latest available statistics for assessing Teignbridge local housing need; and***
 - b) It is unclear what evidenced housing supply including any 'headroom', is expected to be delivered in the plan period; and***
 - c) Consequently, there is currently a lack of clarity about the potential risk of unmet housing need in the Teignbridge plan area.***
- 2. The Council also considers that Policy H1 is not effective because the proposed contingency criteria 3c in Policy H1 through a Housing Delivery Action Plan to accommodate an agreed proportionate level of unmet housing need identified in the review of the Torbay Local Plan, is currently non-implementable, in the absence of both an agreed apportionment mechanism and an agreed protocol and governance mechanism on how to agree the apportionment.***

The Council is therefore concerned that the consequences of Policy H1 as set out in the Regulation 19 plan may place an extra burden on East Devon. It has therefore been necessary to raise these concerns in order to ensure that East Devon District Council can continue the dialogue to address this issue.

Policy H1 should be amended to state a minimum net housing requirement for the whole plan period, taking account of the latest evidenced local housing need. There is an opportunity for Teignbridge District Council to reconsider the supply sources to be counted towards achieving the housing requirement, and to use robust evidence to demonstrate that Teignbridge local housing need in the plan period can be met in the plan area. Without such evidence, there is a risk of supply shortfall such that Teignbridge District Council would then need to consider whether to raise strategic cross boundary matters about its housing need and supply issues with neighbouring planning authorities under the Duty to Co-operate before local plan submission. This has not happened to date.

The following detailed technical reasons for these comments (as set out in paragraph 2.3 of this report) are to be included in the consultation response:

DETAILED TECHNICAL REASONS

2.3 A review of Policy H1 Land for New Homes, the reasoned justification and related evidence, has identified the following issues of concern about housing requirement, supply, and contingency measures relating to Torbay unmet need:

1. **REQUIREMENT:** Based on available evidence, there appears to be insufficient commitment expressed in Policy H1 to planning for and meeting a housing requirement for the whole plan period because:
 - The plan period is 2020 to 2040 but Policy H1 makes housing provision only up to and including 2037/38. There is some ambiguity in the NPPF on the requirement here but we would like some assurance that the strategy can be delivered across the whole plan period.
 - No total housing requirement for the whole plan period is expressed in policy
 - The policy does not express housing requirement as a minimum, so is not consistent with NPPF Paragraph 61
 - Policy H1 does not take account of the latest, available up to date evidence on local housing need, so is not consistent with NPPF Paragraph 31. The policy requirement rate of 741 dwellings per year is lower than the local housing need for 763 dwellings per year based on the standard method and the latest available ONS statistics (March 2022), as shown in the current evidence in the Teignbridge Local Housing Needs Assessment 2022 (footnote 35).
 - Policy H1 is identified in the plan as a strategic policy, but is not consistent with NPPF paragraph 22 because it does not look ahead over a minimum 15 year period from adoption. Policy H1 makes housing provision for 2022 to 2038 (16 years) at 741 dwellings pa, but this is only 15 years from submission to 2038.
 - We note that the ONS statistics used to assess local housing need are due to be updated towards the end of March 2023, and may differ from previous figures, but this is after the Regulation 2023 consultation closes.
 - Without adequate commitment to housing requirement for the plan period, there is a risk that housing need would transfer to adjoining districts within the Exeter housing market, adding to demand pressure on our housing supply.

2. **SUPPLY** There are contradictions between policy H1 and the reasoned justification. They relate to: what evidenced supply sources are relied on to reach conclusions about whether policy 'requirement' is forecast to be met; and whether there is evidence of forecast supply in the plan period that would provide 'headroom'. There is a further contradiction between the plan and evidence in the Statement of Common Ground – Statement 1 paragraph 3.7. This includes issues regarding the term 'buffer' and contingency. The contradictions are confusing and need to be resolved, otherwise there is a risk of supply shortfall:

a) Windfalls

- Reasoned justification paragraph 5.4 states that windfalls (111 per year – understood to be on small, non garden land sites), "are not included within overall supply figures" but also states that "it nevertheless enables a good level of 'headroom' or flexibility to help ensure that the small site requirement can be met, and that overall delivery steps up as required to meet the new annual housing target for the district." This is of concern because:
 - If windfalls are not counted in supply then they are not part of a supply headroom (where headroom needs evidence of the potential to deliver supply within the plan period). They might still be capable of providing 'additional flexibility' above evidenced supply but this flexibility would not be 'evidenced' and therefore not part of a quantified assessment of housing delivery for the plan period in the plan area.
 - Without windfalls, then supply is 12,489 dwellings and there is a potential supply shortfall if the latest housing need figure of 763 is applied to the 18 years to the end of the plan period (ie a requirement of 13,734 dwellings).
 - However, it is unclear why no allowance is made for small windfalls (non-garden land) in the Teignbridge supply forecast. Other than allowing sufficient lead in time (possibly 3 years) from the 2022 monitoring point, there appears to be no reason why they would not come forward throughout the plan period.
 - 15 years (2025 to 2040) of windfalls at 111 per year, provided they can be evidenced, would add 1,665 dwellings to supply and a total of 14,154. This would be 420 above a 13,734 residual requirement, providing a modest headroom of 3% against that 18 year requirement.
 - Allowing for supply 'headroom' is necessary to provide flexibility. The Teignbridge plan should consider what scale of headroom is appropriate. Headroom exceeding the 3% indicated above, would need additional supply to be identified that can be delivered in Teignbridge in the plan period.

b) Dartmoor supply

- We note that the Teignbridge local plan is silent on the extent to which any of the Teignbridge district local housing need is accommodated within the Teignbridge part of Dartmoor through the adopted Dartmoor Local Plan (2018 to 2036). From this we understand that at this time, housing supply within the Teignbridge part of Dartmoor is not taken into account in setting the Teignbridge Local Plan housing requirement in Policy H1.

- This is also reflected in the Statement of Common Ground Statement 1 where para 3.7e states the “*DNP (Dartmoor National Park) expects a total of 379 homes to be delivered within the Dartmoor area of the Teignbridge / Exeter HMA. These homes will not be counted towards meeting the Teignbridge housing target, but rather will be considered as an additional buffer to ensure flexibility and choice of land supply.*”
- It is unclear why that part of the 379 dwellings which could be expected to be delivered during 2020 to 2040 has not been deducted from the Teignbridge plan requirement, particularly as the Dartmoor Local Plan is adopted. There is precedence for this in the justification for the housing requirement in the Plymouth and South West Devon Joint Local Plan, which took account of an allowance for 600 dwellings of those parts of South Hams and West Devon in the National Park. This was accepted by the Inspector examining that plan. Also, it is not precluded by the conclusions reached in the Inspector’s Report for the Dartmoor Local Plan. The deduction would then increase the ‘moderate surplus’ referred to in a) above, if windfalls are included in supply.

c) Buffers

- The plan’s use of the term ‘buffer’ in RJ paragraph 5.1 is unclear. There is further confusion about whether the buffer is 20% just for years 1 to 5, or whether there is also a 10% buffer for years 6 to 10 (as indicated in SOCG-Statement 1). Both are silent about years 11+.
- The 20% buffer derives from the latest Teignbridge Housing Delivery Test that results in a 20% buffer being required for Teignbridge 5 year housing land supply calculations. It is reasonable to conclude that identified supply should be 20% above the requirement for 5 years, now and at the point of plan adoption, taking account of any supply shortfall/surplus since the current monitoring point.
- However, a 20% supply buffer at the adoption point is not the same as a plan period supply headroom. ‘Headroom’ is the amount of supply forecast to be delivered in the plan period that is over and above the total plan period requirement, or at least the residue of plan period requirement from the latest monitoring point. A planning authority cannot, and is not, expected to guarantee housing delivery. Some allocations and commitments may not come forward ‘Headroom’ is therefore an effective means of managing uncertainty about future housing supply over the plan period.

3. CONTINGENCY MEASURES RELATING TO TORBAY UNMET NEED

It is noted that Policy H1 in the Teignbridge Plan references potential scope to accommodate housing from Torbay that Torbay Council may not be able to reasonably accommodate within their boundaries. The Teignbridge plan wording is qualified in respect of how this accommodation would work, and in part it relates to the progress of the Torbay Plan to and through its own examination to adoption (noting they are at quite an early stage on plan making).

At this time, the level of housing requirement implied by Policy H1 has not been raised to accommodate any unmet housing need from elsewhere. However, contingency criteria 3c in policy H1 states that:

“The Local Planning Authority will take action through the delivery of a Housing Delivery Action Plan to enable the development of additional dwellings on unallocated (‘departure’) sites in sustainable locations:

or c. to accommodate an agreed proportionate level of unmet housing need identified in the review of the Torbay Local Plan if this is not already being met through oversupply from windfall development in excess of the annual housing target. The cumulative development arising from applications of this nature will not exceed the total amount of unmet need required”.

(Note: Policy H1 includes criteria which such development would need to meet).

The matter is further addressed in supporting evidence set out in Statement of Common Ground: Statement 2 – Addressing Torbay needs. This SOCG is between Torbay and Teignbridge. There is no agreement about the scale of any unmet need, or how any unmet need might be apportioned.

However, the following “Agreed outcome” is stated in Statement 2.

“If, through the Torbay Local Plan preparation process, Torbay can clearly evidence and identify that it has an unmet housing need that is unable to be accommodated within Torbay, the relevant authorities will agree a mechanism for distributing this across the Plymouth and Exeter Housing Market areas and this will be addressed in future updates to the Teignbridge Local Plan”

That ‘outcome’ is of concern because it is premature. East Devon DC and other relevant authorities in the two housing market areas are not party to this SOCG and therefore Policy H1 Criteria 3c is currently non-implementable. There is no agreed mechanism or protocol at this time nor current evidence to support the assertion of an appropriate solution being agreed through their (ie Torbay Local Plan) Examination in Public, which Reasoned Justification paragraph 5.10 anticipates, and on which Criteria 3c relies. Teignbridge DC should reconsider whether it is reasonable at this time to rely on an outcome assertion that *relevant authorities “will agree” a mechanism for distributing this across the Plymouth and Exeter Housing Market areas*”.

There is also concern about the prematurity of paragraph 1.6 in Statement 2. As written, it prejudges the scope for how to identify unmet need and protocol for how to develop options to address unmet Torbay need, by expressing a view that more work needs to be done to assess the following:

- *“An objective review of Torbay’s HELAA to identify the potential of currently discounted sites. This could include a cross boundary assessment of discounted sites in neighbouring authorities to understand comparative levels of impact.*
- *An objective assessment of how unmet housing need might be appropriately redistributed across the housing market areas, taking into account economic growth and employment opportunities across the sub-region, social ties, and how the displacement of indigenous housing need will affect the future prosperity of Torbay. This includes gaining an understanding of what proportion of housing need in Torbay originates from outside the Devon area,*

which may reasonably be distributed across the wider Exeter and Plymouth HMAs because there is no strong connection to being located specifically in the Torbay locality”.

Consequently, East Devon District Council raises concerns with regard to Criteria 3c in policy H1, in terms of prematurity and effectiveness, so that the District Council can continue the dialogue to address this concern whilst reserving its position on this matter.

Discussions with officers at Teignbridge District Council suggest that further evidence will be made available to address many of the issues highlighted above while they would also be willing to propose minor modifications to the plan to address other comments where amendments to the plan would be necessary. It is therefore hoped that through further work and discussions with officers at Teignbridge that it may well be possible to withdraw our concerns in the future. In the meantime however it is considered necessary to protect the council’s position so that in the event that these issues are not addressed we can make formal representation at the examination in front of the inspector.

Financial implications:

There are no financial implications on which to comment at this consultation stage

Legal implications:

There are no legal implications other than as set out in the report.